

Division 3. Air Resources Board

Chapter 5. Standards for Motor Vehicle Fuels

Article 2. Standards for Diesel Fuel

§ 2281. Sulfur Content of Diesel Fuel.

(a) Regulatory Standard.

(1) On or after October 1, 1993, no person shall sell, offer for sale, or supply any vehicular diesel fuel which has a sulfur content exceeding 500 parts per million by weight.

(2) Subsection (a)(1) shall not apply to a sale, offer for sale, or supply of diesel fuel to a refiner where the refiner further processes the diesel fuel at the refiner's refinery, prior to any subsequent sale, offer for sale, or supply of the diesel fuel.

(3) For the purposes of subsection (a)(1), each sale of diesel fuel at retail for use in a motor vehicle, and each supply of diesel fuel into a motor vehicle fuel tank, shall also be deemed a sale or supply by any person who previously sold or supplied such diesel fuel in violation of subsection (a)(1).

(b) Definitions.

For the purposes of this section:

(1) "Diesel fuel" means any fuel that is commonly or commercially known, sold or represented as diesel fuel No. I-D or No. 2-D, pursuant to the specifications in ASTM Standard Specification for Diesel Fuel Oils D 975-81, which is incorporated herein by reference.

(2) "Executive Officer" means the executive officer of the Air Resources Board, or his or her designee.

(3) "Further process" means to perform any activity on diesel fuel, including distillation, desulfurization, or blending, for the purpose of bringing the diesel fuel into compliance with the standard in subsection (a)(1).

(4) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.

(5) "Produce" means to convert liquid compounds which are not diesel fuel into diesel fuel.

(6) "Producer" means any person who produces vehicular diesel fuel in California.

(7) "Refiner" means any person who owns, leases, operates, controls or supervises a refinery.

(8) "Refinery" means a facility that produces liquid fuels by distilling petroleum.

(9) "Small refiner" means any refiner who owns or operates a refinery in California that:

(A) Has and at all times had since January 1, 1978, a crude oil capacity of not more than 50,000 barrels per stream day;

(B) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in California with a total combined crude oil capacity of more than 50,000 barrels per stream day; and

(C) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in the United States with a total combined crude oil capacity of more than 137,500 barrels per stream day.

(10) "Stream day" means 24 consecutive hours of actual operation of a refinery.

(11) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(12) "Vehicular diesel fuel" means any diesel fuel (A) which is not conspicuously identified as a fuel which may not lawfully be dispensed into motor vehicle fuel tanks in California; or (B) which the person selling, offering for sale, or supplying the diesel fuel knows will be dispensed into motor vehicle fuel tanks in California; or (C) which the person selling, offering for sale, or supplying the diesel fuel in the exercise of reasonable prudence should know will be dispensed into motor vehicle fuel tanks in California, and that is not the subject of a declaration under penalty of perjury by the purchaser, offeree or recipient stating that s/he will not sell, offer for sale, or transfer the fuel for dispensing, or dispense the fuel, into motor vehicle fuel tanks in California.

(c) Test Method.

The sulfur content of diesel fuel limitation specified in subsection (a)(1) shall be determined by ASTM Test Method D 2622-94, which is incorporated herein by reference, or any other test method determined by the executive officer to give equivalent results.

(d) Presumed Sulfur Content of Diesel Fuel Represented As Being for Nonvehicular Use.

All diesel fuel which has been identified or represented as a fuel which may not be dispensed into motor vehicles in California shall be deemed to have a sulfur content exceeding 500 parts per million by weight, as determined by a test method identified in subsection (c), unless the fuel is tested in accordance with a method identified in subsection (c) and is shown to have a sulfur content of 500 parts per million by weight or less.

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(e) Variances.

(1) Any person who cannot comply with the requirements set forth in subsection (a)(1) because of reasons beyond the person's reasonable control may apply to the executive officer for a variance. The application shall set forth:

(A) the specific grounds upon which the variance is sought;

(B) the proposed date(s) by which compliance with the provisions of subsection (a)(1) will be achieved; and

(C) a plan reasonably detailing the method by which compliance will be achieved.

(2) Upon receipt of an application for a variance containing the information required in subsection (e)(1), the executive officer shall hold a hearing to determine whether, or under what conditions and to what extent, a variance from the requirements in subsection (a)(1) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such notice, not less than 20 days prior to the hearing.

(3) At least 20 days prior to the hearing, the application for the variance shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

(4) No variance shall be granted unless all of the following findings are made:

(A) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with subsection (a)(1) would result in an extraordinary economic hardship;

(B) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance.

(C) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(5) Any variance order shall specify a final compliance date by which the requirements in subsection (a)(1) will be achieved. Any variance order shall also contain a condition that specified increments of progress necessary to assure timely compliance be achieved, and such other conditions, including limitations on the sulfur content of diesel fuel produced for use in motor vehicles, that the executive officer, as a result of the testimony received at the hearing, finds necessary to carry out the purposes of division 26 of the Health and Safety Code.

(6) The executive officer may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the state board, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(7) No variance from the requirements set forth in subsection (a)(1) based on a plan for compliance which includes the installation of major additional equipment shall be issued to a producer where installation of the equipment was not included in a compliance plan or first update submitted pursuant to subsection (f). No such variance shall have a duration of more than three years.

(8) No variance which is issued due to conditions of breakdown, repair, or malfunction of equipment shall have a duration, including extensions, of more than six months.

(9) The executive officer may, after holding a hearing without complying with the provisions of subsections (e)(2) and (e)(3), issue an emergency variance to a person from the requirements of subsections (a)(1) upon a showing of reasonably unforeseeable extraordinary hardship and good cause that a variance is necessary. In connection with the issuance of an emergency variance, the executive officer may waive the requirements of subsection (e)(6). No emergency variance may extend for a period of more than 45 days. If the applicant for an emergency variance does not demonstrate that he or she can comply with the provisions of subsection (a)(1) within such 45-day period, an emergency variance shall not be granted unless the applicant makes a prima facie demonstration that the findings set forth in subsection (e)(4) should be made. The executive officer shall maintain a list of persons who have informed the executive officer in writing of their desire to be notified by telephone in

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advance of any hearing held pursuant to this paragraph (e)(9), and shall provide advance telephone notice to any such person.

(10) A variance shall cease to be effective upon failure of the party to whom the variance was granted substantially to comply with any condition.

(11) Upon the application of any person, the executive officer may review and for good cause modify or revoke a variance from the requirements of subsection (a)(1) after holding a hearing in accordance with the provisions of subsections (e)(2) and (e)(3).

(f) Submittal of Compliance Plan.

Each producer shall, by July 1, 1990, submit to the executive officer a plan showing the producer's schedule for achieving compliance with subsection (a)(1). Each producer shall, by July 1, 1991, July 1, 1992, and July 1, 1993 submit an update of the plan.

(g)(1) The Executive Officer shall suspend the requirements of subsection (a)(1) until October 1, 1994, for diesel fuel produced by a small refiner who demonstrates to the Executive Officer's satisfaction that it is making good faith efforts to construct additional desulfurization equipment, either at the small refiner's refinery or in a cooperative agreement with one or more other small refiners, in accordance with a schedule which is reasonably likely to enable the small refiner to comply with subsection (a)(1) through use of the desulfurization equipment by October 1, 1994.

(2) In order to qualify for a suspension under this subsection (g), the small refiner shall, by January 1, 1993, submit to the Executive Officer a compliance schedule setting forth the sequence and respective dates of all key events in the construction process including completion of plans and engineering drawings, ordering of equipment, receipt of equipment, signing of construction and other necessary contracts, commencement and completion of various phases of work, commencement and completion of testing, and other similar events and dates.

(3) A small refiner who has received a suspension pursuant to this subsection (g) shall notify the Executive Officer in writing within 10 days after the failure of the small refiner to meet any increment of progress on the compliance schedule submitted, and the likely effect of that failure on the ability of the small refiner to comply with subsection (a)(1) by October 1, 1994. If, following a public hearing conducted on at least 10-days written notice to the small refiner, the Executive Officer determines that the small refiner will no longer be able to achieve compliance with subsection (a)(1) through the use of the specified desulfurization equipment by October 1, 1994, s/he shall withdraw the suspension effective 10 days after written notification of the withdrawal to the small refiner.

NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101 of the Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). Reference: Sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43016, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).

REFERENCE